

Department of Health and Human Services

§ 17.7

17.4 Regulatory investigations and trial-type proceedings.

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AUTHORITY: 5 U.S.C. 301.

SOURCE: 41 FR 3, Jan. 2, 1976, unless otherwise noted.

§ 17.1 Definition.

Adverse information released by an agency means any statement or release by the Department or any principal operating component made to the news media inviting public attention to an action or a finding by the Department or principal operating component of the Department which may adversely affect persons or organizations identified therein. This part does not apply to nor is it affected by any disclosure of records to the public in response to requests made under the Freedom of Information Act (Pub. L. 90-23). The criteria for such disclosures are set forth in the Department's Public Information Regulation (45 CFR part 5).

§ 17.2 Basic policy.

All adverse information release to news media shall be factual in content and accurate in description. Disparaging terminology not essential to the content and purpose of the publicity shall be avoided.

§ 17.3 Precautions to be taken.

The issuing organization shall take reasonable precautions to assure that information released is accurate and that its release fulfills an authorized purpose.

§ 17.4 Regulatory investigations and trial-type proceedings.

Adverse information relating to regulatory investigations of specifically identified persons or organizations or to pending agency trial-type proceedings shall be released only in limited circumstances in accordance with the criteria outlined below:

(a) Where the Department or a principal operating component determines that there is a significant risk that the public health or safety may be impaired or substantial economic harm may occur unless the public is notified immediately, it may release informa-

tion to news media as one of the means of notifying the affected public speedily and accurately. However, where the Department or principal operating component determines that public harm can be avoided by immediate discontinuance of an offending practice, a respondent shall be allowed an opportunity, where feasible, to cease the practice (pending a legal test) in lieu of release of adverse information by the agency.

(b) Where it is required in order to bring notice of pending agency adjudication to persons likely to desire to participate therein or likely to be affected by that or a related adjudication, the Department or principal operating component shall rely on the news media to the extent necessary to provide such notice even though it may be adverse to a respondent.

§ 17.5 Context to be reflected.

The authority for and the character of the information shall be made clear, where appropriate, the release shall explain the nature of any studies performed, the sources of relevant data, the areas in which administrative findings of fact were made, and whether the information is based on allegations subject to subsequent adjudication.

§ 17.6 Advance notice.

Any respondent or prospective respondent in an agency proceeding shall, if practicable and consistent with the nature of the proceeding, be given advance notice of information to be released about the proceeding and a reasonable opportunity to prepare in advance a response to the information released.

§ 17.7 Retractions or corrections.

Where the Assistant Secretary for Public Affairs finds that information released by the Department was misleading or a misstatement of fact and any person named therein requests a retraction or correction, the Department shall issue a retraction or correction in the same manner to all of the media outlets that received the original information (or as many of them as is feasible). Where information shown to be misleading or misstatement of fact has been released by a principal